

AMENDED IN ASSEMBLY APRIL 7, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2799**

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**Introduced by Assembly Member Chau**

February 19, 2016

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An act to add Chapter 22.2.5 (commencing with Section 22586) to Division 8 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL’S DIGEST

AB 2799, as amended, Chau. Privacy: personal information: preschool and prekindergarten purposes.

Existing law, The Student Online Personal Information Protection Act, restricts the use of information about elementary and secondary school students by operators of certain Internet Web sites and online services and applications by, among other things, prohibiting operators from engaging in targeted advertising, amassing student profiles except for K–12 school purposes, or selling or disclosing student information, as specified. Existing law also requires an operator to implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information to protect the information from unauthorized access, use, and disclosure.

Existing law also prohibits an operator of an Internet Web site or online service from knowingly using, disclosing, compiling, or allowing a 3rd party to use, disclose, or compile the personal information of a minor for the purpose of marketing or advertising specified types of products or services. Existing law also makes this prohibition applicable to an advertising service that is notified by an operator of an Internet Web site, online service, online application, or mobile application that the site, service, or application is directed to a minor.

This bill would, commencing on July 1, 2017, prohibit the operator of an Internet Web site, online service, online application, or mobile application that is used primarily for preschool or prekindergarten purposes, as defined, and was designed and marketed for preschool and prekindergarten purposes, to knowingly engage in specified activities with respect to their site, service, or application, including, among other things, engaging in targeted advertising, using specified information to amass a profile about a ~~child~~ *pupil* except in furtherance of preschool or prekindergarten purposes, and selling or disclosing a ~~child's~~ *pupil's* information, as specified. The bill would also require an operator to, among other things, implement and maintain reasonable security procedures and practices appropriate to the information to protect that information from unauthorized access, and to delete a ~~child's~~ *pupil's* information at the request of a ~~preschool or~~ *preschool*, prekindergarten, or district, as specified. The bill would authorize the disclosure of a ~~child's~~ *pupil's* information under specified circumstances. The bill would also provide that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 22.2.5 (commencing with Section 22586)  
2 is added to Division 8 of the Business and Professions Code, to  
3 read:

4  
5 CHAPTER 22.2.5. EARLY LEARNING PERSONAL INFORMATION  
6 PROTECTION ACT  
7

8 22586. (a) For purposes of this ~~section~~, “operator” *section*:

9 (1) “Operator” means the operator of an Internet Web site,  
10 online service, online application, or mobile application with actual  
11 knowledge that the site, service, or application is used primarily  
12 for preschool or prekindergarten purposes and was designed and  
13 marketed for preschool and prekindergarten purposes.

14 (2) “Pupil” means a child enrolled in a preschool or  
15 prekindergarten course of instruction.

16 (b) An operator shall not knowingly engage in any of the  
17 following activities with respect to their site, service, or application:

1 (1) (A) Engage in targeted advertising on the operator's site,  
2 service, or application.

3 (B) Target advertising on any other site, service, or application  
4 if the targeting of the advertising is based upon any information,  
5 including covered information and persistent unique identifiers,  
6 that the operator has acquired because of the use of that operator's  
7 site, service, or application described in subdivision (a).

8 (2) Use information, including persistent unique identifiers,  
9 created or gathered by the operator's site, service, or application,  
10 to amass a profile about a ~~child~~ *pupil* except in furtherance of  
11 preschool or prekindergarten purposes.

12 (3) Sell a ~~child's~~ *pupil's* information, including covered  
13 information. This prohibition does not apply to the purchase,  
14 merger, or other type of acquisition of an operator by another  
15 entity, provided that the operator or successor entity continues to  
16 be subject to the provisions of this section with respect to  
17 previously acquired ~~child~~ *pupil* information.

18 (4) Disclose covered information unless the disclosure is made:

19 (A) In furtherance of the preschool and prekindergarten purposes  
20 of the site, service, or application, provided that the recipient of  
21 the covered information disclosed pursuant to this subparagraph:

22 (i) Is prohibited from further disclosure of the information unless  
23 ~~the disclosure is done to allow or improve operability and~~  
24 ~~functionality within that child's preschool and pupil's classroom,~~  
25 *preschool, or prekindergarten.*

26 (ii) Is required to comply with subdivision (d).

27 (B) To ensure legal and regulatory compliance.

28 (C) To respond to or participate in a judicial process.

29 (D) To protect the safety of users or others, or the security of  
30 the site.

31 (E) To a service provider, if the operator contractually (i)  
32 prohibits the service provider from using any covered information  
33 for any purpose other than providing the contracted service to, or  
34 on behalf of, the operator, (ii) prohibits the service provider from  
35 disclosing any covered information provided to the operator with  
36 subsequent third parties, and (iii) requires the service provider to  
37 implement and maintain reasonable security procedures and  
38 practices as provided in subdivision (d).

39 (c) Nothing in subdivision (b) shall be ~~constructed~~ *construed*  
40 to prohibit the operator's use of information for maintaining,

1 developing, supporting, improving, or diagnosing the operator's  
2 site, service, or application.

3 (d) An operator shall:

4 (1) Implement and maintain reasonable security procedures and  
5 practices appropriate to the nature of the covered information, and  
6 protect that information from unauthorized access, destruction,  
7 use, modification, or disclosure.

8 (2) Delete a ~~child's~~ *pupil's* covered information if the ~~preschool~~  
9 ~~or prekindergarten~~ *preschool, prekindergarten, or district* requests  
10 the deletion of data under the control of the preschool,  
11 prekindergarten, ~~school~~, or ~~school~~ district.

12 (e) Notwithstanding paragraph (4) of subdivision (b), an operator  
13 may disclose covered information of a ~~child~~ *pupil* if paragraphs  
14 (1) to (3), inclusive, of subdivision (b) are not violated under the  
15 following circumstances:

16 (1) If other provisions of *federal or state* law require the operator  
17 to disclose the information, and the operator complies with ~~that~~  
18 *the requirements of federal and state* law in protecting and  
19 disclosing ~~the that~~ information.

20 (2) For research purposes (A) as required by *state or federal*  
21 law and subject to the restrictions under ~~that applicable state or~~  
22 *federal* law or (B) as ~~permitted by~~ *allowed by state or federal* law  
23 and under the direction of a preschool, prekindergarten, ~~school~~,  
24 school district, or state department of education, if no covered  
25 information is used for any purpose in furtherance of advertising  
26 or to amass a profile of the ~~child~~ *pupil* for purposes other than  
27 preschool and prekindergarten purposes.

28 (3) To a state or local educational agency, including ~~preschools~~  
29 ~~and prekindgartens~~, ~~schools~~ *preschools, prekindgartens*, and  
30 school districts, for preschool and prekindergarten purposes, as  
31 permitted by state or federal law.

32 (f) Nothing in this section prohibits an operator from using  
33 deidentified *pupil* covered information ~~of a child~~ as follows:

34 (1) Within the operator's site, service, or application or other  
35 sites, services, or applications owned by the operator to improve  
36 educational products.

37 (2) To demonstrate the effectiveness of the operator's products  
38 or services, including their marketing.

39 (g) Nothing in this section prohibits an operator from sharing  
40 aggregated deidentified covered information of a ~~child~~ *pupil* for

1 the development and improvement of educational sites, services,  
2 or applications.

3 (h) “Online service” includes ~~a cloud computing service,~~  
4 *services*, which must comply with this section if it otherwise meets  
5 the definition of an operator.

6 (i) “Covered information” means personally identifiable  
7 information or materials, in any media or format that meets any  
8 of the following:

9 (1) Is created or provided by ~~a child, pupil, or the child’s pupil’s~~  
10 *parent or legal guardian*, to an operator in the course of the ~~child’s,~~  
11 *pupil’s, parent’s, or legal guardian’s use of the operator’s site,*  
12 *service, or application for preschool and prekindergarten purposes.*

13 (2) Is created or provided by an employee or agent of the  
14 preschool, prekindergarten, school district, local educational  
15 agency, or county office of education, to an operator.

16 (3) Is gathered by an operator through the operation of the site,  
17 service, or application described in subdivision (a), and is  
18 descriptive of ~~a child~~ *pupil* or otherwise identifies ~~a child, pupil,~~  
19 including, but not limited to, information in the ~~child’s pupil’s~~  
20 *educational record, record or email*, first and last name, home  
21 address, telephone number, email address, or other information  
22 that allows physical or online contact, discipline records, test  
23 results, special education data, juvenile dependency records, grades,  
24 evaluations, criminal records, medical records, health records,  
25 social security number, biometric information, disabilities,  
26 socioeconomic information, food purchases, political affiliations,  
27 religious information, text messages, documents, student identifiers,  
28 search activity, photos, voice recordings, or geolocation  
29 information.

30 (j) “Preschool or prekindergarten purposes” means purposes  
31 that customarily take place at the direction of ~~preschools,~~  
32 ~~prekindergartens, teachers, school districts, and aids,~~ *the preschool,*  
33 *prekindergarten, teacher, or school district, or aid in the*  
34 *administration of preschool or prekindergarten activities,*  
35 including, but not limited to, instruction in the classroom, ~~facility,~~  
36 or *at home*, administrative activities, and collaboration between  
37 ~~children, early learning pupils, preschool or prekindergarten~~  
38 *personnel, or parents, or are for the use and benefit of the*  
39 ~~preschools, prekindergartens, school district, or early learning~~  
40 *personnel, preschool or prekindergarten.*

1 (k) This section shall not be construed to limit the authority of  
2 a law enforcement agency to obtain any content or information  
3 from an operator as authorized by law or pursuant to an order of  
4 a court of competent jurisdiction.

5 (l) This section does not limit the ability of an operator to use  
6 a ~~child's~~ *pupil's* educational data, including covered information,  
7 for adaptive learning or customized early learning purposes.

8 (m) This section does not apply to general audience Internet  
9 Web site, general audience online services, general audience online  
10 applications, or general audience mobile applications, even if login  
11 credentials created for an operator's site, service, or application  
12 may be used to access those general audience sites, services, or  
13 applications.

14 (n) This section does not limit Internet service providers from  
15 providing Internet connectivity to preschools, prekindergartens,  
16 ~~schools, or children~~ *or pupils* and their families.

17 (o) This section shall not be construed to prohibit an operator  
18 of an Internet Web site, online service, online application, or  
19 mobile application from marketing educational products directly  
20 to parents so long as the marketing did not result from the use of  
21 covered information obtained by the operator through the provision  
22 of services covered by this section.

23 (p) This section does not impose a duty upon a provider of an  
24 electronic store, gateway, marketplace, or other means of  
25 purchasing or downloading software or applications to review or  
26 enforce compliance of this section on those applications or  
27 software.

28 (q) This section does not impose a duty upon a provider of an  
29 interactive computer service, as defined in Section 230 of Title 47  
30 of the United States Code, to review or enforce compliance with  
31 this section by third-party content providers.

32 (r) This section does not impede the ability of ~~minors~~ *pupils* to  
33 download, export, or otherwise save or maintain their own  
34 personally created data or documents.

35 22587. This chapter shall become operative on July 1, 2017.

36 SEC. 2. The provisions of this act are severable. If any  
37 provision of this act or its application is held invalid, that invalidity

- 1 shall not affect other provisions or applications that can be given
- 2 effect without the invalid provision or application.

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